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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/640,086 | 08/13/2003 | Henry P. Gabryjelski | MS1-499USC1 | 7653 |
| 22801 | 7590 | 06/22/2006 | EXAMINER | |
| LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201 | | | PSITOS, ARISTOTELIS M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2627 | |

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/640,086

Applicant(s)

GABRYJELSKI, HENRY P.

Examiner

Aristotelis M. Psitos

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2627

Applicant's response of 4/26/06 has been considered with the following results.

The amendment to the specification with respect to the continuity between this application and its parent 09/531236 is noted.

Claim Objections

Claim 11 is still objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

If applicants' are of the opinion that the claim is an independent claim, then the claim should be re-written in independent form and appropriate fee payment thereof.

Response to Arguments

Applicant's amendments/arguments filed 4/26/06 have been fully considered but they are not persuasive. As noted by statute, a dependent claims further limits the previous subject matter (by reference to a claim or claims). However, as presented, the present claim 11 is drawn to a product, while the parent claim is a process. Although product-by-process claims are permissible, this is not the case at hand, since this is not a product by process.

The examiner strongly recommends amending the claim in independent form.

Double Patenting

The nonstatutory double patenting rejection is no longer maintained, due to the acceptance of the TD filed on 4/26/06.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer et al further considered with either Yoshinaka or Hayashi.

Art Unit: 2627

Brewer et al discloses an optical disc information editing system for audio visual data, the ability of aligning audio sectors in accordance with a determination predicated upon a disclosed "tab error" – see abstract as well as col 1 line 1 to col. 5 line 20. The system's final operational parameters/operational settings are appropriately control by the overall system desired result – i.e., aligning the audio sectors/frames accordingly. The examiner interprets frames as sectors. There is no clear disclosure with respect to the claimed "generating one or more metrics" as recited in claim 1.

Either Yoshinaka or Hayashi disclose in this environment, the ability of generating "metrics" in their disclosed decoding systems – see branch metrics calculation in Yoshinaka or the Viterbi decoder in Hayashi.

It would have been obvious to modify the base system of Brewer et al with the above teaching from either of the secondary references, motivation is as discussed in either of the secondary references, the proper signal decoding capability and hence leading to correction of any misalignment of the audio sectors/information.

With respect to claim 2, the audio in Brewer et al is interpreted as an audio block.

With respect to claims 3,4,7 and 9, the amplitude difference is interpreted as present from either of the secondary references, i.e., the branch metric calculation of Yoshinaka or the Viterbi decoder of Hayashi. With respect to first and second bundle, the examiner interprets such as present by the discussion of the different types of audio information discussed in the primary reference to Brewer et al, i.e., "stereo" as provided basis for a first bundle (left of right channel) and a second bundle (right or left channel).

With respect to claims 5,6, and 8, i.e., the position of the first and second bundle, the examiner further considers such a placement, i.e., as claimed immediately adjacent to be met by normal stereo audio recordings, i.e., a left and right channel are normally immediately adjacent to each other.

With respect to claims 6 and 8 as they further recite control "one or more" operational settings, at least one is set by the overall combination of references as relied upon with the analysis of claim 1.

With respect to claim 11 the record medium in Brewer et al is interpreted as the claimed "machine readable".

Art Unit: 2627

With respect to claim 12, the overall system of Brewer et al is interpreted as a "computer" system, i.e., a storage device – the appropriate record medium being used/accessed, and the execution unit – the processor thereto.

Response to Arguments

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In particular applicants' position is that the base reference fails to disclose the claimed features:

- a) analyzing at least the read subset of audio content to quantify optical drive read accuracy;
- and,
- b) generating one or more metrics of optical drive read accuracy based, at least in part, on the analysis of the read subset of audio content.

However, since the overall operation of the system – see the reference to figure 17 of an operations system the invention is drawn to, has the ability of an optical drive – see starting at col. 20 line 57 till col. 22 line 38, and reliance upon appropriate aligning/alignment step for the audio samples is necessary, the examiner maintains his position as previously presented.

Furthermore, in keeping with the above noted decisions, either of the secondary references teaches the negation of "metrics" and such a capability is relied upon to ensure proper signal decoding/recognition.

As disclosed by applicant – see paragraph 41 of the PGPUB equivalent 2004/0034507 – applicant's intra-sector analyzer reviews the amplitude information in order to generate "metric" information.

Hence the examiner concludes that the claimed "metric" is predicated upon appropriate signal amplitude determination(s) arising from the appropriate signal processing of the signal.

Art Unit: 2627

Since either of the secondary references are concerned with proper signal processing and utilize appropriate circuitry for generating "metric/s" therefrom, the examiner concludes that overall combination of references render the claimed invention/in light of its disclosure as being obvious.

The dependent claims fall accordingly.

2. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 as stated in paragraph 1 above, and further in view of well known RLL/ or Huffman coding/decoding capabilities as further discussed in Sethuraman – see col. 1 lines 26-41.

It would have been obvious to modify the base system as relied upon above in paragraph 8 with the additional teaching from Sethuraman, motivation is as disclosed/taught therein, for proper intra-frame coding/decoding.

Response to Arguments

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive.

The dependent claim falls with its respective parent claim for the reasons amplified above.

3. Claims 1 and 11-12 are rejected under 35 U.S.C. 103 (a) as being obvious over Ledermann further considered with either Yoshinaka or Hayashi.

Ledermann discloses an optical medium playback system in which information is read, a particular tonal signal – interpreted as the claimed "subset of audio content". Such subset is analyzed. There is no particular disclosure with respect to the remaining claimed limitation of generating one or more metrics of the drive accuracy based on such analysis. Although the system to Ledermann wants to detect "jitter" and such is predicated upon analyzing his subset of the audio content, there is no "metrics".

Either Yoshinaka or Hayashi disclose in this environment, the ability of generating "metrics" in their disclosed decoding systems – see branch metrics calculation in Yoshinaka or the Viterbi decoder in Hayashi.

It would have been obvious to modify the base system of Ledermann with the above teaching from either of the secondary references, motivation is as discussed in either of the secondary references,

Art Unit: 2627

the proper signal decoding capability and hence leading to correction of any misalignment of the audio sectors/information.

With respect to claim 11, since a readable medium is part and parcel of the base reference, this limitation is met. This claim is interpreted as presented herein – i.e., a dependent claim, but see the above objection thereof.

With respect to claim 12 it is met by the above combination, i.e., an optical media as a machine readable medium having the appropriate plurality of information recorded thereon, as when read – as when desired to be used by a user – in the above overall system, appropriate one or more performance attributes/jitter for instance is appropriate quantifiably measured.

Response to Arguments

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive.

That the secondary references fail to teach the use of metrics for optical drive accuracy", is not persuasive. The references do teach the use of metrics for proper amplitude detection/evaluation of the reproduced signal(s) – digital -. Obviously such processing is for proper signal reception. As noted in the primary reference to Ledermann proper signal analysis is required to ensure accuracy of signal playback – for instance as noted in col. 9 lines 53-60 for instance.

The examiner maintains the rejection.

The dependent claims fall accordingly with their respective parent claim.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 as stated in paragraph 3 above and further considered with Shen et al.

With respect to claim 2, the examiner interprets the information read as a block of audio. Furthermore, the ability of having and detecting audio blocks of different sizes is well known as further taught by the Shen et al reference.

It would have been obvious to modify the base system as relied upon above in paragraph 9 with respect to Ledermann and either Yoshinaka/Hayashi with the above teaching from Shen et al, motivation is to correct for appropriately sized audio blocks.

Art Unit: 2627

Response to Arguments

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive.

The dependent claim falls with its respective parent claim, as noted above in paragraph 3.

5. Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 2 above as stated in paragraph 4 above, and further in view of Brewer et al and the secondary references to either Yoshinaka or Hayashi.

In Brewer et al is interpreted as an audio block as well as stereo audio – i.e., a first and second bundle.

With respect to claims 3,4,7 and 9, the amplitude difference is interpreted as present from either of the secondary references, i.e., the branch metric calculation of Yoshinaka or the Viterbi decoder of Hayashi. With respect to first and second bundle, the examiner interprets such as present by the discussion of the different types of audio information discussed in the primary reference to Brewer et al, i.e., "stereo" as provided basis for a first bundle (left of right channel) and a second bundle (right or left channel).

With respect to claims 5,6, and 8, i.e., the position of the first and second bundle, the examiner further considers such a placement, i.e., as claimed immediately adjacent to be met by normal stereo audio recordings, i.e., a left and right channel are normally immediately adjacent to each other.

With respect to claims 6 and 8 as they further recite control "one or more" operational settings, at least one is set by the overall combination of references as relied upon with the analysis of claim 1.

Response to Arguments

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive.

The dependent claim falls with its respective parent claim, as noted above in paragraphs 3 and 4 above.

Art Unit: 2627

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 as stated in paragraph 3 above, and further in view of well known RLL/ or Huffman coding/decoding capabilities as further discussed in Sethuraman – see col. 1 lines 26-41.

With respect to claim 10, the ability of having inter-frame/sector control is considered met by the appropriate RLL or Huffman coding/decoding abilities for intra-frame alignment.

It would have been obvious to modify the base system as relied upon above in paragraph 3 with the additional teaching from Sethuraman, motivation is as disclosed/taught therein, for proper intra-frame coding/decoding.

Response to Arguments

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive.

The dependent claim falls with its respective parent claim, as noted above in paragraph 3.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DeGroat et al is cited as illustrative of a channel quality detection system in this environment, using analysis of the information for appropriate generation of "metric" values in order to optimize the operation of the playback system – see the abstract for instance, and the discussion with respect to figures 4 and 8 starting at cols. 11 line 49 till col 12 line 59 and col. 14 line 27-63.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

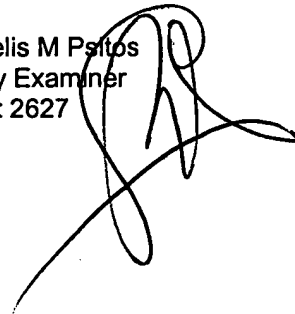
Art Unit: 2627

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aristotelis M. Psitos whose telephone number is (571) 272-7594. The examiner can normally be reached on M-F: 6:00 - 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne D. Bost can be reached on (571) 272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aristotelis M Psitos
Primary Examiner
Art Unit 2627

A handwritten signature in black ink, appearing to be 'AMP', written over the printed name of the examiner.

AMP